



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

HD:hd

Docket No: 04154-99

10 February 2000

LCDR [REDACTED] SN

Dear Commander [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 10 February 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the advisory opinion furnished by the Navy Personnel Command dated 17 November 1999, a copy of which is attached. The Board also considered your letter dated 26 January 2000.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection, the Board substantially concurred with the comments contained in the advisory opinion.

The Board noted that Bureau of Naval Personnel Instruction 1610.10, enclosure (2), paragraph N-14.g does not prohibit fitness report comment on a member's marital status or activities of a spouse "where unavoidably necessary to clarify other information in the report." They further noted that the contested report does not violate the prohibition of paragraphs N-13.c and N-14.e against mentioning a nonpunitive letter of censure, as it does not expressly mention you received such a letter. While the letter was issued only five days before the end of the reporting period, the Board found you did not need formal counseling to know it was wrong to ask a junior enlisted member to lie for you; and you should not have needed it to anticipate that your reporting senior might find it objectionable for you to take a woman not your wife to the Navy Ball. In this regard, they noted you concede that you saw the need to consult the command legal office for an opinion on the propriety of escorting

someone not your wife, while separated. Though that office may have been technically correct in advising you "there was no prohibition against it," the Board found nothing barring the reporting senior from taking the position that such behavior reflected poorly on your "judgement, personal honor and conduct." Finally, whether or not you are correct that Florida "recognizes legal separation in the form of maintaining separate residences," the Board was unable to find that the reporting senior erred by stating you and your wife were "not legally separated." They observed you assert no basis, other than your having maintained separate residences, for your conclusion that this statement was unjustified. The Board found it would be reasonable, given the common understanding of the term "legally separated," for the reporting senior to describe you as "not legally separated" if your physical separation had not been formalized by means of any separation agreement or court decree.

In view of the above, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER  
Executive Director

Enclosure



**DEPARTMENT OF THE NAVY**

**NAVY PERSONNEL COMMAND  
5720 INTEGRITY DRIVE  
MILLINGTON TN 38055-0000**

4154-99  
1610  
PERS-311  
17 November 1999

**MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF  
NAVAL RECORDS**

Via: PERS/BCNR Coordinator (PERS-00XCB)

Subj: LCDR [REDACTED], USN, [REDACTED]

Ref: (a) BUPERSINST 1610.10 EVAL Manual

Encl: (1) BCNR File

1. Enclosure (1) is returned. The member requests the removal of, or change to the objective grades and comments on the fitness report for the period 22 October 1997 to 31 October 1998.

2. Based on our review of the material provided, we find the following:

a. A review of the member's headquarters record revealed the report in question to be on file. It is signed by the member acknowledging the contents of the report and his right to submit a statement. The member indicated his desire to submit a statement. The member's statement and first endorsement are properly reflected in the member's record.

b. Lieutenant Commander [REDACTED] alleges the fitness report in question does not accurately reflect his performance for the entire reporting period. The member states the inputs given to the reporting senior from his immediate superior resulted in an inaccurate assessment of Lieutenant Commander [REDACTED] performance. It is appropriate for the reporting senior to obtain and consider information from an officer's immediate supervisor in developing a fitness report. Whatever the manner the report is developed, it represents the judgment of the reporting senior.

c. The grades on a fitness report reflect the reporting senior's perception of the subordinate's performance and may certainly be influenced by incidents that occurred during the period of the report. It is perfectly acceptable for the reporting senior to evaluate a member's performance by taking into account facts which has been clearly established through reliable evidence to the reporting senior's satisfaction. In this case, the reporting senior makes it clear in the fitness report that he evaluated [REDACTED] performance and made comments based on the member's actions.

d. We cannot administratively make the requested changes to the fitness report in question. Only the reporting senior who signed the original report can submit supplementary material for

file in the member's record. The member may request the reporting senior to submit a letter supplement or supplemental fitness report for filing in his record.

e. A fitness report does not have to be consistent with previous or subsequent reports. Each fitness report represents the judgment of the reporting senior during a particular reporting period.

f. The member does not prove the report to be unjust or in error.

3. We recommend the member's record remain unchanged.

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Head, Performance  
Evaluation Branch